

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1 RICHARD FREYTES, et al.,

2 Plaintiffs,

3 v.

4 HERSHEY FOODS CORPORATION,
5 et al.,

6 Defendants.

CIVIL NO. 98-1324

RECEIVED & FILED
00 FEB -9 AM 11:26
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

7
8
9 ORDER DISMISSING THE COMPLAINT
10 AS TIME-BARRED

11 Defendant has moved the Court to dismiss the complaint filed
12 in the instant case. The Court having considered the evidence
13 submitted by the parties as well as the applicable law hereby finds
14 that plaintiffs' claim for tortious interference is time-barred and,
15 therefore, must be dismissed.

16 **PROCEDURAL BACKGROUND**

17
18 This action was initially filed in State Court on **March 2, 1998**
19 against HERSHEY FOODS CORPORATION ("HERSHEY") and its local sales
20 manager alleging tortious interference with plaintiff's resale of
21 HERSHEY's products in certain parts of the Island. The case was
22 removed to this forum and the claims asserted against the individual
23 defendant dismissed by the Court for failure to state a colorable
24
25
26

CIVIL NO. 98-1324 (RLA)

Page 2

1 claim.¹ HERSHEY, the only remaining defendant, has moved the Court
2 to dismiss the complaint as untimely filed.²

3 THE FACTS

4 The following facts are not in controversy.

5 HERSHEY is a manufacturer and supplier of confectionary
6 products.

7 Plaintiff, RICHARD FREYTES ("FREYTES"), became a customer of
8 HERSHEY prior to 1990.

9 For twenty-five years, beginning in the 1960's, FREYTES placed
10 purchase orders in Puerto Rico from HERSHEY CHOCOLATE USA, a
11 division of HERSHEY, for certain HERSHEY products, primarily
12 chocolate candies.

13 FREYTES resold the products purchased from HERSHEY to
14 individual retailers, including grocery stores, located within the
15 East and Central geographic regions of Puerto Rico.

16 On or about 1994 or 1995 FREYTES's customers began to purchase
17 HERSHEY products directly from HERSHEY.

18 On or about 1994 or 1995 FREYTES verbally communicated to
19 HERSHEY'S sales supervisor, NELSON GUILLOTY, and HERSHEY's sales

20
21
22
23 ¹ See Order Dismissing Individual Defendant and Denying Motion
24 to Remand, filed on July 21, 1998 (docket No. 11).

25 ² Given our disposition of this case there is no need to
26 address the other grounds submitted by defendant in support of its
petition for dismissal.

CIVIL NO. 98-1324 (RLA)

Page 3

1 manager, JUAN PABLO MENDOZA, that HERSHEY'S competition was
2 affecting his profits by causing him to lose his clientele.
3

4 On **November 18, 1997** FREYTES wrote a letter to HERSHEY's Credit
5 Department evidencing the return of unsold merchandise and advising
6 that he would no longer buy HERSHEY's products.

7 Prior to the filing of the complaint on **March 2, 1998** FREYTES
8 made no claim against HERSHEY for alleged damages resulting from
9 HERSHEY's sale of its products to plaintiff's retail customers.
10

11 STATUTE OF LIMITATIONS

12 The only claim asserted in the complaint is defendant's alleged
13 tortious interference with plaintiffs' resale of HERSHEY products
14 to retailers in certain geographic regions in Puerto Rico³ which is
15 subject to the one-year statute of limitations provided for in P.R.
16 Laws Ann. tit. 31, § 5298 (1990). Borg Warner Int'l Corp. v. Quasar
17 Co., 95 JTS 30. A tort action "accrues - and the [one year]
18

19 3

20 Counsel for plaintiffs indicated that there was
21 no distribution contract between the parties
22 and that there are no claims asserted in this
23 case under the distribution laws of Puerto
24 Rico, including law 75. He specifically stated
25 for the record that the complaint was premised
26 on defendant's tortious interference with
plaintiff's relationship with the small
retailers he sold chocolates to, i.e., his
clients.

25 See Minutes of Initial Scheduling Conference Held on August 20,
26 1998 (docket No. 15) at p.2.

CIVIL NO. 98-1324 (RLA)

Page 4

1 prescriptive period ... therefore begins to run - when the injured
2 party knew or should have known of the injury and of the likely
3 identity of the tortfeasor." Tokyo Marine & Fire Ins. v. Perez &
4 Cia., 142 F.3d 1, 3 (1st Cir. 1998). See also Rodriguez-Suris v.
5 Montesinos, 123 F.3d 10, 13 (1st Cir. 1997) and Borg Warner, 95 JTS
6 at 722.

8 Plaintiffs argue that the claim accrued in 1997 when FREYTES
9 was allegedly forced to discontinue his business due to the drop in
10 sales based on HERSHEY's competition. However, in his deposition
11 plaintiff testified that in 1994 or 1995 his clients commenced
12 turning down the merchandise because defendant had offered them the
13 same products at lower prices. Thus, it is undisputed that FREYTES
14 learned about HERSHEY's direct sales to his customers in this period
15 of time. It is at that time that the claim for tortious
16 interference accrued since FREYTES immediately became aware both of
17 the detrimental effect HERSHEY's undertakings had upon his sales and
18 the identity of the alleged wrongdoer. Therefore, the one-year term
19 expired at the latest in 1996. The fact that he was not yet aware
20 of the precise measure of the damages to his business is of no
21 consequence. Borg Warner, 95 JTS at 72.

23 Absent evidence that plaintiffs submitted any claim - judicial
24 or otherwise - demanding relief for the alleged tortious conduct
25 prior to the filing of the complaint in 1998, the one-year term was
26

CIVIL NO. 98-1324 (RLA)

Page 5

not tolled and the complaint is, therefore, untimely. Tokyo Marine,
142 F.3d at 4.

CONCLUSION

Based on the foregoing, defendant's Motion for Summary Judgment
(docket No. 31)⁴ is **GRANTED** and the complaint filed in this case is
DISMISSED AS TIME-BARRED.

Judgment shall be entered accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 8th day of February, 2000.



RAYMOND L. ACOSTA
United States District Judge

⁴ See Plaintiff's Opposition... (docket No. 32) and
defendant's Reply... (docket No. 33).